

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on
Judiciary**

March 27, 2015

S.B. No. 569 SD1: RELATING TO THEFT

Chair Rhoads and Members of the Committee:

S.B. No. 569 SD1 would increase the dollar threshold level for felony theft from the current \$300 to \$400. We support this bill because it would eliminate, as felonies, cases where value of the property taken is less than \$400.

The rise in prices of all consumer items has resulted in the threshold amount for felony theft being very low. 1986 was the last time the threshold amount was raised when it went from \$200 to the current \$300. (1986 Session laws of Hawaii, Act 314). The raising of the level would not prevent the courts from imposing prison terms for theft. Even if treated as a misdemeanor, an offender could receive up to a one-year term of prison. In reality, very few felony theft offenders, unless they have a prior felony conviction, receive the possible five-year jail term. The vast majority of these cases are currently resolved by placing the offender on either a deferred acceptance of plea, or probation.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaiʻi

March 27, 2015

RE: S.B. 569, S.D. 1; RELATING TO THEFT.

Chair Rhoads, Vice Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 569, S.D. 1. The purpose of this bill is to increase the threshold value of stolen property or services from \$300 to \$400, for the offense of Theft in the Second Degree.

For most victims of theft, \$300 is a very significant amount of money. For offenders, theft—unlike some offenses—is nearly always an “intentional” crime, where offenders intentionally deprive their victims of property or services in lieu of an appropriate payment or transaction. And for those who might commit theft due to substance abuse issues, multiple opportunities for diversion, treatment, deferral and/or expungement are already available.

If the minimum value for Theft in the Second Degree is increased to \$400, retailers will be increasingly victimized by repeat or 'professional' offenders, who are apparently aware of the felony threshold value. In court, our Deputy Prosecuting Attorneys have come across offenders who reportedly steal items of value just under the current threshold of \$300, repeatedly, because they know that this will be charged as a misdemeanor rather than a felony. If S.B. 569, S.D. 1, were to pass, those offenders would likely adapt to stealing just under \$400, rather than the current threshold of \$300, causing greater harm to businesses in Hawaii. This increase in threshold would also affect everyday citizens who are victims of theft. The average citizen who works for minimum wage in Hawaii has to work nearly 40 hours to earn \$300; and would have to work over 50 hours to earn over \$400. Ultimately, it is our legitimate, law abiding citizens who suffer the losses caused by these offenders.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 569, S.D. 1. Thank you for this opportunity to testify.



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TO:
COMMITTEE ON JUDICIARY
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 27, 2015
TIME: 3pm
PLACE: Conference Room 325

RE: SB569 SD1

Position: Comments

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA strongly opposes increasing the threshold property and services valuation for theft in the second degree. While we appreciate that this bill will cause less financial damage to businesses than the 150% increase proposed by the House bill, it is important to understand that even an increase of \$100 will cause exponential losses to Hawaii businesses.

Increasing the threshold value encourages theft. The National Retail Federation estimates that the value of merchandise lost to theft is over 1% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24.3 billion in 2010), the loss to theft is more than \$240 million.

Increasing the threshold value by over 30% is basically just saying thieves can steal over 30% more without fear of serious consequences. Our Loss Prevention professionals report that there are chronic shoplifters, some with dozens of arrests or more, these professional shoplifters know the system and actually calculate the value of the merchandise they are stealing to keep under the \$300 amount to avoid prosecution and serious penalties. In these cases the retailer is never compensated and has absolutely no hope of recovery. For a small business, a loss of almost 1% of sales is huge.

It is also important to understand that food retailers, small and large, operate at a profit margin of around 1%, any loss to theft has to offset at least in part if these businesses are to stay open. The only way to do that is to increase prices. Shoplifting is not a victimless crime against, "big corporations" it is a crime against real people and real businesses in our communities, and it negatively affects all of us.

We should also note that this measure is not limited to shoplifting, it applies to individuals as well. Having \$300 worth of personal property stolen is already a tremendous loss, which for most of us means the loss of many hours worked and savings accumulated. Increasing it to \$400 leaves individuals open to even greater loss.

Increasing the threshold for theft is bad for businesses, bad for customers, bad for individuals, and bad for Hawaii. The only people an increase benefits are thieves. If the legislature finds that it is absolutely necessary to increase the threshold value we would ask that it be a one-time increase of not more than \$100.

Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy Sanbuenaventura, Vice Chair

Friday, March 27, 2015

3:00 p.m.

Room 325

OPPOSITION to SB 569 SD1 = THRESHOLD FOR FELONY THEFT **HB 1326 HD1 PREFERRED**

Aloha Chair Rhoads, Vice Chair Sanbuenaventura and Members of the Committee!

My name is Kat Brady and I am a Community Justice Advocate. I am also the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars and the thousands of people on probation and parole. We are always mindful that more than 1,600 of Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 569 SD1 increases the threshold value of property or services from \$300 to \$400 under the offense of theft in the second degree. Effective 01/07/2059.

Community Alliance on Prisons opposes this measure, preferring HB 1326 as a more reasonable threshold for a Class B Felony. Raising the threshold to \$750 would place Hawai'i around the mid-range of where other jurisdictions are drawing the felony line.

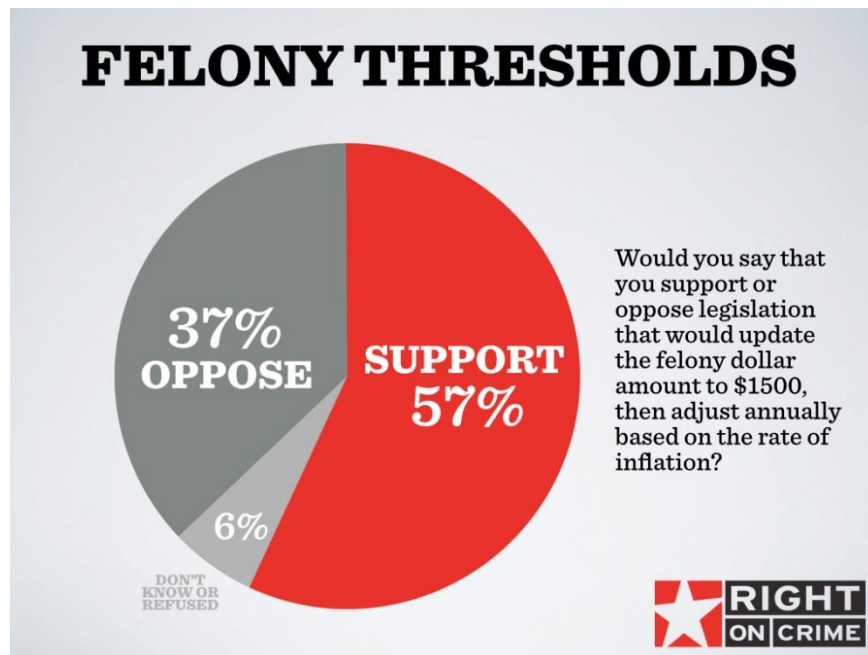
Community Alliance on Prisons supports adjusting the threshold since Hawai'i's threshold has remained at \$300 since 1986. We, therefore, decided that an impartial way to determine a proper threshold for Hawai'i's felony theft would be to go to the Bureau of Labor Statistics¹ and use their Inflation Calculator to see what \$300 in 1986 would equate to in 2014.

Calculating the inflation rate from 1986 to 2014, the Bureau of Labor Statistics determined that \$300 in 1986 equates to \$648 in 2014. When one adjusts for the 'paradise tax' of +30%, that adds another \$194.40 meaning that \$300 in Hawai'i in 1986 would equate to \$842.40 in 2014.

¹ Bureau of Labor Statistics – Inflation Calculator http://www.bls.gov/data/inflation_calculator.htm

Understanding the increasing costs of incarceration and that theft is primarily a crime that is fueled by substance abuse, many states have sought ways to address the theft felony threshold. Community Alliance on Prisons has been researching this issue for more than a decade to get a landscape view of how other states deal with theft. Our research shows that Hawai'i has remained at the low-end of the threshold for felony theft and that the range for the felony threshold varied from \$200 - \$3,000.

A new poll² released on March 9, 2015 by Right on Crime, the nation's leading conservative public policy campaign for criminal justice reform, shows voters strongly support criminal justice reforms in Texas. The poll conducted by Wilson Perkins Allen Opinion Research for the Texas Public Policy Foundation found that the vast majority of likely Texas voters want to hold more nonviolent offenders accountable in communities, make penalties proportionate to the crime, and ensure those leaving prison spend part of their sentence-under community supervision. When asked about felony thresholds for theft, here is the response:



The Pew Center on the States' Public Safety Performance Project reported:

The length of time served in prison has increased markedly over the last two decades, according to a new study by Pew's Public Safety Performance Project. Prisoners released in 2009 served an average of nine additional months in custody, or 36 percent longer, than offenders released in 1990.

Several states have reclassified or redefined criminal offenses in recent years; such changes impact sentence length and, ultimately, Length of Stay (LOS) in prison. In many

² **New Poll Shows Voters Strongly Support New Justice Reforms in Texas**, Right on Crime, AUSTIN, TX, March 9, 2015. <http://rightoncrime.com/2015/03/new-poll-shows-voters-strongly-support-new-justice-reforms-in-texas/>

states, the monetary value of stolen goods necessary to trigger a felony was established decades ago and has not been adjusted to keep pace with inflation. The result is that someone can have a longer sentence for a property crime today for the theft of less valuable material goods than in the past. In 2010, South Carolina revised several offense definitions and increased the monetary value threshold that triggers a felony charge for certain property offenses. A number of other states—including Alabama (2003), Arkansas (2011), California (2009), Delaware (2009), Montana (2009), and Washington (2009)—also have raised the felony threshold dollar amount for various theft offenses.³

Property offenders released in West Virginia and Hawaii in 2009 served 3.2 and 3.3 years on average, a full year longer than the national average⁴ (see Table 3). South Dakota and Tennessee tied for the shortest average LOS for property offenders released in 2009, at 1.3 years in each state, a full year less than the average. (page 18).

Since the national average of time spent is 1 year less than Hawai'i, our taxpayers are spending \$48,910 per incarcerated individual serving time for a property offense.⁵

In short, SB 569 SD1 proposes that **a person who steals property worth \$401** commits the offense of theft for which they could serve 3 years and 3 months on average (\$48,910 x 3 years + 90 days/3 months @ \$134/day (\$12,060)) and **can cost taxpayers \$162,810**. Taxpayers have no insurance to cover our losses. Especially when Hawai'i could implement proven alternatives, but hasn't done so.

Community Alliance on Prisons has been asserting that sending low level lawbreakers to prison is paying to send individuals to criminal college.

NPR had a story on February 1, 2013⁶ that cited the work of Donald T. Hutcherson II, a sociology professor at Ohio University in Lancaster, who recently decided to tackle the question by mining the vast data in the U.S. government's National Longitudinal Survey of Youth.

The survey conducts incredibly detailed and confidential interviews, and then repeats those interviews with the same people year after year — often going to extraordinary lengths to track down those who may have moved overseas or ended up in prison.

³ TIME SERVED - The High Cost and Low Returns of Longer Prison Sentences, Pew Center on the States, Public Safety Performance Project, page 39, June 2012.

<http://www.pewstates.org/research/reports/time-served-85899394616>

⁴ The national average is 2.3 years.

⁵ TIMESERVED, Hawai'i Fact Sheet.

<http://www.pewstates.org/research/state-fact-sheets/time-served-in-hawaii-85899396333>

⁶ **When Crime Pays: Prison Can Teach Some To Be Better Criminals**, SHANKAR VEDANTAM, February 01, 2013. <http://www.npr.org/2013/02/01/169732840/when-crime-pays-prison-can-teach-some-to-be-better-criminals> Listen to the Story

<http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=169732840&m=170823697>

Included in the survey are questions about how much money individuals make legally and illegally. Because the survey also ascertains whether people have spent time in prison, Hutcherson pored through data from tens of thousands of queries to a large number of young people to establish whether illegal earnings went up or down after individuals served time.

If prison reformed criminals, illegal earnings once people were released ought to have gone down. But if prison was a "finishing school" for criminals, illegal earnings after serving time should have increased.

"Spending time in prison leads to increased criminal earnings," Hutcherson says. "On average, a person can make roughly \$11,000 more [illegally] from spending time in prison versus a person who does not spend time in prison."

We know that the retail merchants association will oppose any increase in the felony threshold, yet these merchants have insurance to cover their losses. The poor, over-burdened Hawai'i taxpayer, however, is burdened with a \$134 per day/\$48, 910 per year cost for incarcerating individuals convicted of felony theft. There is no insurance for us.

Community Alliance on Prisons respectfully asks the committee to consider the research, the situation of Hawai'i's taxpayers and **to raise the threshold to \$750 or replace the contents of this bill with HB 1326 or HB 1326 SD1.** This will still keep Hawai'i in the middle range or below what most jurisdictions are enacting as their felony thresholds.

Mahalo for this opportunity to submit our research on this important subject that is a contributor to approximately 25% of our imprisoned population, according to August 30, 2014 figures from the Department of Public Safety.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Friday, March 27, 2015 at 3:00 P.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 569 SD1 RELATING TO THEFT

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 569 SD1, which increases the threshold value of property or services from \$300 to \$400 under the offense of theft in the second degree.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber believes that the increase proposed in SB 569 SD1 could lead to an increase in theft as it allows thieves to steal more without serious consequences. Loss Prevention professionals have reported that there are chronic shoplifters who calculate the value of merchandise to steal in order to keep it under the \$300 limit and avoid prosecution and serious penalties. For retailers that have to deal with these chronic shoplifters, increasing the monetary threshold would only harm those businesses as they cannot be compensated and cannot penalize the thieves, who will return and continue stealing.

The National Retail Federation estimates that the value of merchandise lost to theft is over 1% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24.3 billion in 2010), the loss to theft is more than \$240 million lost by Hawaii businesses in 2010 alone.

We respectfully ask that this bill be held in committee. Thank you for the opportunity to testify.

JUDICIARY COMMITTEE

Karl Rhoads, Chair

Joy A San Buenaventura, Vice Chair

SB569 SD1, Theft in the Second Degree; Value of Property or Services

Friday, March 27, 2015, 3 p.m.

3pm, Room 325

SUPPORT

Dear Chair Rhoads, Vice Chair San Buenaventura, and Committee Members:

I am e. Ileina Funakoshi, a constituent of our beloved State of Hawai`I.

I support SB569 SD1 which increases the threshold value of property or services from \$300 to \$400 under the offense of theft in the second degree, effective 03/07/2059.

Although I would have preferred a higher threshold, I support any increase to the threshold value of property or services because its long overdue. And, I thank the committee for their favorable consideration of this measure.

Thank you for the opportunity to submit my testimony.

With warm Aloha,

e. ileina funakoshi

Submitted By	Organization	Testifier Position	Present at Hearing
Lorenn Walker	Individual	Support	No

Comments: Please pass this measure as a small step to help decrease the massive prison problem we have created in our state. Putting petty thieves in prison is a good way to seriously criminalize them and make our community less safe. Mahalo for your public service. Aloha, Lorenn Walker, JD, MPH